I will not hold that Saniah has lost all prospects of marriage. I will, however, hold that her prospects of marriage has been reduced by her loss in appearance and gait as a result of the injuries sustained in the accident.

In a number of other cases digested in the same page of the *Malayan Law Journal*, general damages ranging form $13,000 to $20,000 had been awarded in respect of claims for damages for disability arising from the shortening of a leg as a result of fracture of the femur or leg bones. However, in the case of *Wan Siew Lim* v. *Mohamed Ariffin*,(6) the court awarded a sum of $8,500.

Unlike as in the cases referred to, Saniah sustained a fracture of both the right and left femur. Taking all the facts and circumstances into consideration including reduced prospects of marriage, I assess general damages at $20,000.

Florie Samuel was 22 years of age at the time of the accident. She was admitted to the General Hospital, Ipoh, on the 16th of December 1961 and treated as an in-patient until the 10th of May 1962. She was found suffering from the following injuries:—

1. 5" long lacerated wound over the right side of the scalp.
2. Fracture of the cervical spine with marked weakness of the right upper and lower extremities and some disturbance of sensation over the left half of the body.

When examined by Mr. Menon on 24th October 1963, he noted that the right upper extremity of the muscles of the forearm was weak and that the fingers of the right hand could only be partially flexed or extended. Consequently, the ability to grip and the finer movement of the fingers are not possible within any degree of efficiency. As a result of the fracture of the cervical spine, the left side of the body from the shoulder down is not sensitive to pain or temperature. Up to the date of giving evidence in court her condition had not improved and in the opinion of Mr. Menon, her disabilities are likely to be permanent.

Florie is a school teacher and her disabilities have not affected her employment as such. However, the limited use of the fingers of the right hand is a serious handicap to her as a teacher and the injury to her spine has permanently deprived her of the ability to participate in out-door games. Although she has not complained of reduced prospects of marriage I am satisfied that that element of damage cannot be overlooked in her case. Taking all the circumstances into consideration, I will assess general damages at $15,000.

Jayeswari Sinnadorai was 22 years of age at the time of the accident. She was admitted into the General Hospital, Ipoh, on the 16th of December 1961 and treated as an in-patient until the 21st of January 1962. On admission her condition and injuries were described as follows:—

1. Patient was unconscious.
2. Bleeding from mouth and right ear.
3. Lacerated wound over the right side of scalp.
4. Fracture of the jaw.

She has recovered fully from her injuries and according to Mr. Menon who examined her on the 23rd of October 1963 there is no evidence of any disability resulting from the injuries. However, as a result of the accident her right eye had been thrust outward. According to the report of the Ophthamologist the "protosis right eye" is likely to be permanent. This condition of the eye has a disfiguring effect. She complains, that apart from the disfigurement, her right eye hurts when facing strong sunlight.

Jayeswari's employment as a telephone operator has not been affected by the accident. She however claims that the disfiguration of her eye has impaired her prospects of marriage. Her father gave evidence to the effect that attempts to arrange a marriage for her had failed because of the condition of her eye. After seeing her I am not prepared to hold that she has lost all prospects of marriage. I would consider her case to be one in which her prospects of marriage has been reduced. Taking into consideration all the circumstances of the case, I would assess general damages at $8,500.

There will therefore be judgment for the plaintiff against the 1st and 2nd defendants in Civil Suit No. 140 of 1964 for $20,000 and costs, judgment for the plaintiff against the same defendants in Civil Suit No. 141 of 1964 for $15,000 and costs, judgment for the plaintiff against the same defendants in Civil Suit No. 142 of 1964 for $8,500 and costs. The claim against the 3rd and 4th defendants in each of the abovementioned civil suits is dismissed with costs. I further order that the costs payable by the respective plaintiffs to the 3rd and 4th defendants be taxed and recovered from the 1st and 2nd defendants.

Judgment for the plaintiffs.

Solicitors: *N. Sharma; L. H. Singh & Co.*

QUEENSLAND INSURANCE CO. LTD. v. LEE BROTHERS ORGANISATION

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Chua J.) July 4, 1967]

[Singapore — Federal Court Civil Appeal No. Y. 22 of 1967]

Principal and Agent — Agents collecting premiums due on insurance policies — Failure to pay premiums — Claim for full premiums — Acknowledgement of debt — Application under R.S.C. 1934, O. XIV.

By specially indorsed writ the plaintiffs claimed $17,427.94 being money had and received by the defen-

dants as the plaintiffs' agents and being premiums due from business done for and on behalf of the plaintiffs under their agency. The defendants filed a defence and counterclaim after the plaintiffs O. XIV application. On the evidence disclosed in the affidavits the registrar on the basis of an acknowledgement of the sum of $11,619.88 owed as premiums by the defendants, granted leave to the plaintiffs' to sign judgment for this amount and granted the defendants leave to defend the balance of the plaintiffs' claim. The defendants appealed against the registrar's order and the learned judge took the view that there was a triable issue on the whole claim and granted leave to defend the whole claim.

On appeal by the plaintiffs to the Federal Court:—

Held: as there was a clear and unconditional acknowledgement of the amount due and owing by the defendants to the plaintiffs and an unconditional promise to pay it, the learned judge was wrong in granting leave to defend the claim. Accordingly the order of the registrar should be restored.

FEDERAL COURT.

K. C. Chan (*Goh Joon Seng* with him) for the appellants.

John Pillai for the respondents.

The judgment of the Federal Court was read by,

Chua J.: We allowed the appeal with costs and intimated that we would give our reasons later. We now proceed to give our reasons.

The plaintiffs' claim in this case is for the sum of $17,427.94 being moneys had and received by the defendants as the plaintiffs' agent and being premiums due from business done for and on behalf of the plaintiffs under their agency.

The plaintiffs applied by summons under Order XIV for liberty to enter final judgment against the defendants for the amount indorsed on the writ, alternatively for the sum of $11,619.88 being the balance of the sum admitted by the defendants to be due by their acknowledgment dated 22nd August, 1966.

The evidence disclosed on the affidavits filed by the plaintiffs in support of their application is shortly to this effect. The defendants have been an agent of the plaintiffs under a letter of appointment dated the 10th August, 1965, and have been authorised to sell policies and collect the premiums of such policies on behalf of the plaintiffs. Under clause 10 of the letter of appointment it is provided that the defendants shall pay to the plaintiffs all moneys due in respect of policies which have been issued or renewed at the defendants' request or introduction by the plaintiffs within thirty days from the last day of the month for which the statement of account has been prepared and sent to the defendants, irrespective of whether or not the defendants have been previously paid by their clients. Under clause 9 of the letter of appointment it is provided that should the plaintiffs institute proceedings for the recovery of moneys due from the defendants than and in such event the commissions earned shall be forfeited and the full amount of the gross premiums shall be payable by the defendants. In August, 1966, the solicitors for the plaintiffs received from the plaintiffs a statement of account of the premiums collected by the defendants for and on behalf of the plaintiffs made up to the 30th June, 1966. The gross premiums collected totalled $18,427.94, the commission payable to the defendants amounted to $5,808.06, and the net sum due to the plaintiffs amounted to $12,619.88. The solicitors for the plaintiffs wrote to the defendants on the matter. By a letter dated the 13th August, 1966, the defendants intimated their desire to settle the debt owing to the plaintiffs by monthly instalments of $1,000, commencing from the 22nd August, 1966. The letter ended thus:—

"We suggest that we sign a contract between your client and ourselves instead of getting judgment. We are sincere to settle the outstanding account and we believe that you will help us and give us a chance to settle our account. Thanks."

In pursuance of their letter of the 13th August, the defendants on the 22nd August, 1966, signed an acknowledgment, which reads as follows:—

"I, LEE SIANG LOO of No. 152 East Coast Road, Singapore 15, a partner in the firm of Lee Brothers Organisation of No. 58-A Jalan Besar, Singapore, hereby confirms that Lee Brothers Organisation is indebted to Queensland Insurance Company Limited in the sum of $12,619.88 being the outstanding premiums (minus commission) for the accident account as at the end of June 1966.

I, on behalf of Lee Brothers Organisation, agree to repay the said debt in full by monthly instalments of $1,000 commencing from the 22nd day of August 1966 and thereafter on the 22nd day of each month, and in default in the payment of any one instalment Queensland Insurance Company Limited shall be at liberty to commence proceedings for the recovery of the balance outstanding.

It is also agreed that the legal expenses incurred by Queensland Insurance Company Limited in respect of this matter shall be paid by Lee Brothers Organisation."

On the 24th August, 1966, the defendants paid the plaintiffs the sum of $1,000 and thereafter failed to pay the subsequent instalments due. In September, 1966, the defendants issued a cheque in payment of the second instalment but the cheque was dishonoured. The plaintiffs claim that there is now a balance of $17,427.94 due to them as the defendants are no longer entitled to the commission due under the letter of appointment.

The defendants filed a defence and counterclaim after the plaintiffs' Order XIV application. Their defence was shortly this. They denied owing the plaintiffs $17,427.94. They were unable to collect the outstanding premium and the plaintiffs had held these defaulting clients directly responsible to them for payment of the outstanding premiums. They maintained that the plaintiffs were estopped from recovering from them any premium that had not been paid by the clients introduced through their agency.

They had paid the plaintiffs all moneys collected by them in respect of the policies but the plaintiffs had failed to supply them with periodical accounts after April, 1966. They were entitled to a commission of 32½% on all premiums paid by clients introduced through their agency whether such premiums were paid through them or direct to the plaintiffs. The plaintiffs promised them an office allowance of $350 per month from June, 1965, up to November, 1966, but the plaintiffs had never paid the allowance.

The defendants counterclaimed for an account to be taken of all business transacted between them and the plaintiffs and for the payment by the plaintiffs of the commission due to them and for the monthly office allowance of $350 per month.

Lee Siang Loo, a partner of the defendant firm, filed two affidavits in answer to the plaintiff's application under Order XIV and in neither of them was any reference made to the acknowledgment he had signed on the 22nd August. He devoted a great portion of his affidavits in making recriminations against the solicitor who was in charge of the present proceedings for the plaintiffs and who in September, 1966, also acted for him in another suit. He said that the last statement of account supplied to him was for the period up to April, 1966, and that he did not receive the statement of account for the period up to 30th June, 1966. All along he had disputed owing the plaintiffs the sum of $17,427.94 and although he did not have the opportunity of checking the account he offered to pay $1,000 per month, as stated in his letter of the 13th August, 1966, but only on condition that a full account would be supplied to him. The plaintiffs instead of supplying the account issued a writ against the defendant firm and he therefore ceased to pay the monthly instalment of $1,000.

As stated no where in the affidavits of Lee Siang Loo did he mention the acknowledgment of the 22nd August. He did not deny that he signed the acknowledgment and he did not set out the circumstances under which it was signed.

On the evidence disclosed on the affidavits it is not surprising that the registrar granted the plaintiffs leave to sign judgment for the sum of $11,619.88 and granted the defendants leave to defend the balance of the plaintiffs' claim.

The defendants appealed to the judge against the order of the registrar. The learned judge allowed the appeal and granted the defendants leave to defend the claim of the plaintiffs indorsed in the statement of claim.

The present appeal is by the plaintiffs against the order of the learned judge.

The learned judge in his grounds of decision said:—

"It is clear from the affidavits filed in these proceedings that no accounts were ever stated or settled between the parties and the main ground for the allegation that the defendants have no valid defence is based on an acknowledgment of indebtedness made by them in respect of a sum of $12,619.88 and the promise that they would repay this in monthly instalments of $1,000. After one such payment they defaulted and this action was therefore initiated.

It is perhaps unfortunate that the same solicitors acted for both the plaintiffs and the defendants or at least, a partner of the defendant firm, in different suits. This has probably given rise, at least indirectly, to the present acrimonious situation between the solicitor concerned and Mr. Lee Siang Loo and the recriminations made against him by the latter. With such allegations and replies I was not really concerned here, except insofar as they show their respective states of mind with regard to the facts in dispute. What they say about each other is therefore of little help to me except in relation to the circumstances in which the acknowledgment of indebtedness, on which the plaintiffs rely, came to be signed. Mr. Lee Siang Loo has tried to explain these circumstances. There is a triable issue here and it is not for me, at this stage, to determine whether his explanation succeeds. There is certainly some cause for not rejecting it out of hand without further inquiry."

The learned judge is clearly wrong in saying that Lee Siang Loo has tried to explain the circumstances in which the acknowledgment of indebtedness came to be signed.

It is clear in this case that the document signed by the defendants on the 22nd August, 1966, contains a clear and unconditional acknowledgement that a sum of $12,619.88 was due and owing by the defendants to the plaintiffs and an unconditional promise to pay it.

For these reasons we allowed the appeal with costs here and the court below and restored the order made by the registrar.

Appeal allowed.

Solicitors: *Braddell Bros.; Pillai & Co.*

SUBRAMANIA PILLAY v. SUNDRAMMAL; PR. KURUPPIAH — 3rd party

[O.C.J. (MacIntyre J.) July 6, 1967]

[Ipoh — Civil Suit No. 38 of 1965]

Practice and Procedure — Third party notice — Application for order to dismiss claim against 3rd party — Jurisdiction — R.S.C. 1957, O. 16A rr. 2 and 7(1)(b) & (2).

On an application by the defendant under O. 16A r. 2 the court granted leave to issue and serve a 3rd party notice on one Karuppiah claiming for indemnity against the plaintiff's claim. Karuppiah entered appearance on March 25, 1965 and thereafter the defendant took no steps to pursue the matter further. When the action came up for trial the 3rd party had not been served with the notice of trial. However he turned up in court and by his counsel made an oral application for an order dismissing the claim against him with costs.

Held: as there was no issue for trial between the defendant and the 3rd party before the court, it had no jurisdiction at that stage of the trial to make an order in respect of the 3rd party notice served on the 3rd party.